Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1124

STEPHEN GASKIN, et al.,
Appellants,

v.

STATE OF TENNESSEE,
Appellee.

On Appeal from the Supreme Court of the
State of Tennessee

MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

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MOTION TO DISMISS OR AFFIRM APPEAL FROM STATE COURT

The Appellee moves this Court to dismiss the appeal herein, or in the alternative, to affirm the judgment of the Supreme Court of the State of Tennessee on the grounds that (1) the matter is moot, (2) this Court has already ruled upon the issues presented, and (3) it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

A

The Statute

Tennessee Code, Annotated, Section 52-1432(a)(1)(F) make it a felony to manufacture, deliver or sell a controlled substance classified in Schedule VI and poses an imprisonment of not less than one (1) nor more than five (5) years and a fine of not more than Three Thousand ($3,000.00) Dollars. Tennessee Code Annotated, Section 52-1422 includes marijuana in the controlled substances listed in Schedule VI.

B

The Proceedings Below

The Appellants at the trial in this cause admitted cultivating marijuana for their own use and the use of the other three hundred fifty (350) persons living on the farm. They have contended through the proceedings of this matter that enforcement of the State statute regulating the manufacture and use of marijuana unconstitutionally interfered with their First Amendment rights to the free exercise of their religion. Appellants also contend that the trial court curtailed their testimony as to their religious practices resulting in a denial of due process of law.

The trial court found these objections to be without merit, the Supreme Court of Tennessee affirmed the trial court's action on February 5, 1973, and the Supreme Court of the United States dismissed an appeal from the Supreme Court of Tennessee for want of a substantial federal question on October 15, 1973.

The appellants presented a Petition for a Post-Conviction Relief to the Circuit Court for Lewis County, Tennessee, raising the same issues, which petition was dismissed by the County Court on May 31, 1974. An appeal was taken to the Court of Criminal Appeals of Tennessee and the Court of Criminal Appeals of Tennessee affirmed the Circuit Court's dismissal of the Petition for Post-Conviction Relief on June 25, 1975. The Supreme Court of Tennessee denied a Petition for Certiorari from the Court of Criminal Appeals of Tennessee on November 10, 1975, stating that the Court of Criminal Appeals had correctly dealt with the issues from which this appeal has been brought.

II

ARGUMENT

A

The Case Is Moot.

On page eight (8) of the jurisdictional statement of the appellants, they state that the appellants are no longer in prison or on parole. The case of *Carafas v. Lavallee*, 88 S.Ct. 1556, 391 U.S. 234 (1968), overruling *Parker v. Elis*, 80 S.Ct. 909, 362 U.S. 574 (1960), holds that even though one has been unconditionally released from a state prison, if the action for habeas corpus relief was begun in the federal court system while one was still confined, then the case is not moot. The reason for this was that the persons who had been confined should be given an opportunity to present their issues to the federal courts and if successful, relieved of the stigma attached with the conviction.

In the instant case, appellants did not enter the federal court system before they were unconditionally released by the state authorities. Furthermore, the appellants have had an opportunity to present these questions to this Court and in fact have previously presented them in a direct appeal which was denied by this Court for want of a substantial federal question. It therefore appears that even under the *Carafas v. Lavallee, supra*, ruling, this case is moot and should be dismissed.

B

This Matter Has Been Previously Determined by This Court.

The same issues which have been raised in this appeal were raised in the Direct Appeal of the appellants and the Supreme Court of the United States, on October 15, 1973, found that the Direct Appeal did not present a substantial federal question. This

is a ruling on the merits and therefore is res judicata to any subsequent presentation of the same issues. *United States ex rel. Epton v. Nenna*, D.C.N.Y. 1970, 318 F. Sup. 99 Aff. 446 F. 2d 363, cert. denied 92 S. Ct. 282, 404 U.S. 448.

C

The Case Presents No Substantial Question.

This Court has firmly established that although a State may not interfere with religious beliefs, it may enforce general and nondiscriminatory laws which come in conflict with religious activities in the interest of peace, good order and comfort of the community. *Cantwell v. State of Connecticut*, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352; *Reynolds v. United States*, 98 U.S. 145, 25 L. Ed. 244. The people's firm belief that the use of psychedelic drugs, including marijuana, have a demoralizing and harmful effect upon society has been dramatically illustrated by laws in all fifty (50) States and these United States against the manufacture and sale of marijuana.

Both State and Federal Courts have consistently upheld statutes regulating psychedelic drugs in the face of "free exercise of religion" challenges. *Free Exercise of Religion as Defense to Prosecution for Narcotic or Psychedelic Drug Offenses*, 35 A.L.R. 3d 939. The one exception is the case of *People v. Woody*, 61 Cal. 2d 716, 40 Cal. Rptr. 69, 394 P.2d 813 which the California Courts have restricted to the peculiar facts of that case. See *People v. Mitchell*, 244 Cal. App. 2d 176, 52 Cal. Rptr. 884; *People v. Collins*, 273 Cal. App. 2d 486, 78 Cal. Rptr. 151; *People v. Wright*, 275 Cal. App. 2d 738, 80 Cal. Rptr. 335. In *People v. Woody, supra*, the Court found:

> "Although peyote serves as a sacramental symbol similar to bread and wine in certain Christian churches, it is more than a sacrament. Peyote constitutes in itself an object of

worship; prayers are directed to it much as prayers are devoted to the Holy Ghost. On the other hand, to use peyote for nonreligious purposes is sacrilegious. Members of the church regard peyote also as a 'teacher' because it induces a feeling of brotherhood with other members; indeed, it enables the participant to experience the Deity. Finally, devotees treat peyote as a 'protector.' Much as a Catholic carries his medallion, an Indian G. I. often wears around his neck a beautifully beaded pouch containing one large peyote button.

The record thus establishes that the application of the statutory prohibition of the use of peyote results in a virtual inhibition of the practice of defendants' religion. *To forbid the use of peyote is to remove the theological heart of Peyotism.*" [emphasis added]

P2d at 817-818.

On the other hand, marijuana is not indispensable to the faith of the Appellants, but is merely used to reach desired intensification of apperception. This is illustrated by the testimony of Stephen Gaskin, leader of the Appellants, when he stated that he has not only used marijuana in his spiritual teachings, but has also used peyote, LSD, DNT, DET and STP. (B.E. 226-226). If this Court carves out an exception to laws regulating psychedelic drugs for the Appellants, those laws will be unenforceable. Clearly the State's interest in regulating the manufacture and use of psychedelic drugs outweighs the slight infringement made upon the experimental activities of Appellants' religion.

The Appellants have also continually alleged as error the curtailing of testimony at their trial concerning their religious practices, however, Appellants have never stated in any pleadings what testimony was curtailed which was relevant and

beneficial to their case. Stephen Gaskin, the leader of the Appellants, was permitted to testify fully as to the use of marijuana in their religion and religious ceremonies.

III

CONCLUSION

Wherefore, Appellee for all the reasons set out above respectfully moves the Court to dismiss this appeal, or in the alternative, to affirm the judgment entered in the cause of the Supreme Court of Tennessee.

Respectfully submitted,

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